

46 Am. Jur. 2d Judges § 140

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Judges

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IX. Disqualification to Act in Particular Case

B. Grounds for Disqualification

4. Bias or Prejudice as Grounds for Disqualification

b. Appearance of Bias and Partiality as Grounds for Disqualification

§ 140. Representation of judge by counsel for one of parties as grounds for disqualification

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  45, 46, 49(1), 49(2)

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[Judge's previous legal association with attorney connected to current case as warranting disqualification, 85 A.L.R.4th 700](#)

Generally, a judge should not preside over a proceeding involving a private lawyer who is currently representing the judge in an unrelated matter.¹ There is authority that a judge is disqualified to sit in a case where the judge is or has been represented in unrelated matters by counsel for one of the defendants.² However, the appearance of bias arising from past representation will ordinarily be much less disturbing than the appearance arising from concurrent representation because it is more likely to appear to a reasonable person that a judge's conduct of the trial may not be impartial when one of the attorneys is, even as the trial is being held, representing the judge.³

Where past representation of a trial judge by an attorney for one of the parties is not personal to the judge but rather involves representing the judge as part of a class action seeking increased compensation for all trial judges, the "rule of necessity" may become operable, preventing disqualification.⁴

Footnotes

- 1 [In re Disqualification of Park](#), 142 Ohio St. 3d 65, 2014-Ohio-5872, 28 N.E.3d 56 (2014).
- 2 [In re Disqualification of Badger](#), 47 Ohio St. 3d 604, 546 N.E.2d 929 (1989).
- 3 [Reilly by Reilly v. Southeastern Pennsylvania Transp. Authority](#), 330 Pa. Super. 420, 479 A.2d 973 (1984).
A judge was required to recuse herself from ruling on an attorney's motion for a temporary injunction on behalf of a third-party client, unless the rule of necessity applied, where the attorney had represented the judge in the judge's recent dissolution action, and thus the judge's impartiality could reasonably be questioned, and the judge, who would have signed the order ex parte, was unable to disclose to opposing counsel and the opposing party the basis for the possible disqualification and obtain a waiver of the disqualification. [In re Howes](#), 880 N.W.2d 184 (Iowa 2016).
- 4 [Reilly by Reilly v. Southeastern Pennsylvania Transp. Authority](#), 330 Pa. Super. 420, 479 A.2d 973 (1984).
As to disqualification as yielding to necessity, generally, see § 84.

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